In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1073

STATE OF LOUISIANA, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES

This is a direct appeal from a judgment of a three-judge district court which (1) holds unconstitutional those provisions of Article 8, Section 1(d) of the Louisiana Constitution, as amended in 1960, which require of an applicant for registration as a voter the ability to "understand and give a reasonable interpretation" of any section of the Constitution of the United States or of Louisiana, and those provisions of the Louisiana statutes pertaining to the understanding or interpretation test as a prerequisite to registration; (2) enjoins appellants (the State of Louisiana, the members of the Louisiana Board of Registration, and the Director and Ex Officio Secretary of the Board) and their

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agents and successors from enforcing the foregoing constitutional and statutory provisions; and (3) enjoins appellants and their agents and successors, including the registrars of voters in the 21 Louisiana parishes which used the interpretation test, from requiring, in such parishes, any applicant for registration who was of voting age and possessed the residence requirements as of August 3, 1962, to take a multiple-choice "citizenship" test adopted on August 3, 1962 (in compliance with La. Acts 1962, No. 62), after the complaint in this suit had been filed. The decision also upholds the standing of the United States to sue and the propriety of joining the State as a defendant under Section 601(b) of the Civil Rights Act of 1960 (74 Stat. 90, now incorporated in 42 U.S.C. (Supp. IV) 1971(c)).

Although in our view the judgment below is correct, the importance of the case and of the questions tendered renders plenary review appropriate. The basic objective of the suit is to halt the use of a test which, the majority below concluded, followed in the footsteps of the grandfather clause and the white primary as a device to disfranchise Negroes in Louisiana. Not only have the constitutional and statutory provisions pursuant to which the test was applied been invalidated and use of the test enjoined throughout the State, but appellants also have been enjoined from using, in 21 parishes of the State, a new statutory test to determine the qualifications of voters. Thus, the issues are obviously of considerable moment.

The decision below is in conflict with the decision of the three-judge district court in *United States* v.

State of Mississippi, Civil Action No. 3312, S.D. Miss., decided March 6, 1964, in which an appeal to this Court is pending (No. 1097, this Term).[1] In that case, a divided court upheld Mississippi registration requirements very similar to those struck down here (*i.e.*, Section 244 of the Mississippi Constitution, which requires as a prerequisite to registration that, among other things, the applicant be able to give a reasonable interpretation of any section of the Mississippi Constitution to the county registrar). That court rejected claims that the Mississippi provisions vested unlimited discretion in the registrar, provided no objective standards for administration and were not reasonably related to any legitimate governmental objective, and—like the multiple-choice citizenship test in the present case—that they perpetuated past discrimination by imposing new and more stringent requirements for registration following a long period of racial discrimination, while exempting from the new requirement most of the white citizens. In addition, the court there held that suit would not lie against the State of Mississippi because Section 601 (b) of the Civil Rights Act of 1960, which authorizes suits against a State, applies only where voting registrars have resigned and the State is the only possible defendant, and that, regardless of the parties joined, suit by the United States was unauthorized in that 42 U.S.C. 1971(c) does not empower the United

[1] On May 11, 1964, the United States filed its Jurisdictional Statement in *United States* v. *State of Mississippi*. The several opinions in that case are incorporated in that Jurisdictional Statement as Appendix B.

States to challenge directly discriminatory State laws.[2]

We respectfully submit that the Court should note probable jurisdiction and set the case for argument.

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Solicitor General.

BURKE MARSHALL,
Assistant Attorney General.

HAROLD H. GREENE,
DAVID RUBIN,
Attorneys.

MAY 1964.

[2] The filing of this Memorandum would appear to render the present case ripe for notation of jurisdiction. In *United States* v. *State of Mississippi, et al.*, the appellees have until June 10, 1964, in which to file a response to the Jurisdictional Statement.

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